

## **REMARKS**

Claims 34, 48 and 49 have been canceled. These amendments are not intended to narrow the scope of these claims. The claims have been placed in better form for examination and to further obviate the 35 U.S.C. §§102, 103 and 112 rejections set forth in the Final Office Action dated May 14, 2004. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is requested.

In the Office Action Summary (PTOL-326) the Examiner has listed claim 47 as "rejected" in this Office Action but Applicant does not see any rejections on claim 47 in the Office Action. Applicant believes claim 47, which is dependent on allowed claim 42, is also allowable.

Claims 48-49 are rejected under 35 U.S.C. 112 first paragraph as failing to comply with the written description requirement. Claims 48 and 49 have been canceled. Accordingly, withdrawal of this rejection is requested.

Claims 48-49 are rejected under 35 U.S.C. 112 first paragraph as containing subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 48 and 49 have been canceled. Accordingly, withdrawal of this rejection is requested.

Claims 48-49 are rejected under 35 U.S.C. 112, first paragraph, for enablement. Claims 48 and 49 have been canceled. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 50-51 are rejected under 35 U.S.C 112 first paragraph as containing subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or which is the most nearly connected to make and or use the invention. Applicant acknowledges the requirement for a deposit of biological material. Upon allowance of the related claims in this application, the deposit will be made with National Collections of Industrial, Food and Marine Bacteria (NCIMB), 23 St Machar Drive, Aberdeen, Scotland, AB24 3RY, United Kingdom. As stated in the

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**Amendment dated July 26, 2004**  
**Reply to Final Office Action dated May 14, 2004**

specification on page 37, the seed deposit is being maintained by Harris Moran Seed Company at their Davis, California facility. The deposit will be available to the Commissioner during the pendency of this application and upon allowance of any claims, deposits of the squash seed of lines 833 and hybrid 833\*8324 will be made with NCIMB.

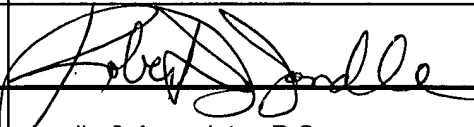
The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

Accordingly, withdrawal of this rejection is requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102, 103, 112 and the judicially created doctrine of obviousness type double patenting and is not obvious over the prior art.

Reconsideration of this application and early notice of allowance is requested.

RESPECTFULLY SUBMITTED,					
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